No. 15061

United States
COURT OF APPEALS
for the Ninth Circuit

WILLIA NIUKKANEN, also known as William Niukkanen, also known as William Albert Mackie,
Appellant,

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service, United States Department of Justice, JOHN WILSON, Officer in Charge, Immigration and Naturalization Service Office,
Appellees.

APPELLANT'S REPLY BRIEF

Appeal from the United States District Court for the District of Oregon

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REPLY IN SUPPORT OF SPECIFICATION OF ERROR NO. 1

Appellant has fully stated his reasons why he believes the statute in question violates the Constitution of the United States. He has pressed the objection in the expectation that the Supreme Court's decisions in *Galvan v. Press,* 347 U.S. 522, 98 L. Ed. 911, 74 S. Ct. 737, and *Harisiades v. Shaughnessy,* 342 U.S. 580, 96 L. Ed.

586, 72 S. Ct. 512, will be overruled this term of the Court. Appellant does not, under such circumstances, wish to waive what he believes to be a valid objection to the statute.

REPLY IN SUPPORT OF SPECIFICATION OF ERROR NO. 2

The Government asks, in effect, for this Court to put blind faith in the judgment of the Inquiry Officer as to the credibility of the witnesses Wilmot and Knipe. But the Government's own Board of Immigration Appeals discounted Knipe's testimony and found that he had lied under oath. Thus the aura of infallibility with which the Government seeks to surround the Inquiry Officer is swept away by its own reviewing authority, and all that is left is the patently false testimony of Wilmot.

Upon this testimony the Government bases its decision that Appellant is deportable. It goes even so far as to "improve" Wilmot's testimony by careless summary. For instance, the Government's brief on pages 7 and 9 asserts that the newspaper "The Labor New Dealer" was a "Communist Party" newspaper. This is absolutely untrue; the fact is clear from the mouth of Wilmot himself that the "Labor New Dealer" was the organ of the Portland Industrial Union Council, part of the C. I. O. (Tr. 15, 27-31).

While the credibility of witnesses is ordinarily left to the judgment of the trier of fact, yet we cannot believe

that this Court will carry such a rule to the point where the harsh sanction of deportation and exile is supported only by the testimony of liars, drunkards, and hopelessly biased witnesses. There must be limits to the effort of the Government to purge from our midst aliens whose attitudes displease the sensibilities of Inquiry Officers.

Even granting the Government's view, *arguendo,* that Appellant was a member of the Communist Party, we think that a fair reading of the record discloses no evidence that such membership was held with knowledge by Appellant that the Communist Party was a "distinct and active political organization" as required by the Supreme Court in *Galvan v. Press,* 347 U.S. 522 at 528.

REPLY IN SUPPORT OF SPECIFICATION OF ERROR NO. 3

The Government in its brief refuses to discuss the objections lodged against the disposition of Appellant's application for suspension of deportation. It merely asserts that the record will disclose that there was no abuse of discretion in this regard.

We respectfully disagree, and we call to the Court's attention again the points made in Appellant's Opening brief, pp. 17-20. Moreover, we urge the Court to read the opinion of the Inquiry Officer, upon which the Government so heavily leans. No clearer evidence is possible than this document to show the bias and the determination of the Inquiry Officer to deport Appellant, regardless of the facts. Having no derogatory evi-

dence or even "confidential information," to base his opinion on, the Inquiry Officer indulges in *non sequiturs,* innuendo and distortions which make a mockery of the "hearing" on this issue.

For example, the Inquiry Officer emphasizes that after Appellant was found deportable, he turned for help to two organizations in the Portland area. This the Inquiry Officer finds objectionable, although he is unable to produce any evidence of disloyalty on the part of these groups except to say that one was "referred" to as a Communist front in a 1948 report by a California legislative committee. If the Inquiry Officer may take "judicial" notice of this report, we might also be excused for calling to this Court's attention the generally unreliable reputation of the legislative committee which produced the report.

The Appellant is clearly a person of good character who has lived a peaceful, constructive life in the United States with his wife and family. He served honorably in the armed forces of this country. There is no evidence of any disloyal act or idea of Appellant. The most that can be said is that during the depression he participated in a small way in various groups devoted to improving economic conditions among working people. Some of these groups may have contained Communists, but the record is clear that Appellant, far from being interested in politics, is and was rather ignorant of such matters and concerned only with "bread and butter" issues.

Under these circumstances, we think that the Government has gone too far in attempting to deport Ap-

pellant. Every decent instinct is outraged when a government goes back into men's lives nearly twenty years and seeks to break up a family and exile the breakwinner because of alleged associations in so distant a past. No single wrongful act is charged against Appellant. No evil thought has been shown to have ever passed through Appellant's mind. Yet we are treated to the spectacle of a government of a great and free democracy seeking to impose deportation on such a person. It is with more than usual feeling that we urge the judgment be reversed.

Respectfully submitted,

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